FIRST - TIER TRIBUNAL
PROPERTY CHAMBER -
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CF/HBA/2023/0002**
Applicant	**:**	**Rotherham Metropolitan Borough Council**
Respondent	**:**	**Arvin Sopaj**
Type of Application	**:**	**For a Banning Order under Section 15(1) of the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge J.M.Going** **J.Fraser FRICS**
Date of Hearing	**:**	**30 April 2024**
Date of Decision	**:**	**9 May 2024**

DECISION

The Decision

The Tribunal rejects the Application both because of the Council not having met the necessary requirements to apply for a banning order and because of the Tribunal's finding that a banning order is not appropriate in all the circumstances of the case.

Preliminary and background

1. By an application ("the Application") dated 19 December 2023 the Applicant, Rotherham Metropolitan Borough Council, ("the Council ") applied to the Tribunal under Section 15(1) of the Housing and Planning Act 2016 ("the 2016 Act") for a Banning Order against the Respondent, Arvin Sopaj, ("Mr Sopaj").

2. The Tribunal issued Directions on 28 December 2023 setting out the issues for it to consider, how the parties should prepare for the hearing and timetables for the provision of relevant documents.

3. The bundle of documents supplied by the Council included copies of its notice of intent to apply for a banning order, court records, witness statements from Jeremy Squires, one of its community protection officers, with various exhibits, government guidance, and its own policy relating to banning orders, together with a draft of its proposed order.

4. The documents supplied by Mr Sopaj included his responses, copies of documentation issued to him by the Council relating to a selective licence, a visa payment receipt, a gas certificate, a five-year electrical installation condition report, and a testimonial from his present tenants.

5. A full video hearing was held on 29 April 2024. The Council was represented by Ms Katie Etheridge, one of its solicitors, and Mr Squires. Mr Sopaj represented himself.

Facts and chronology

6. The Tribunal has highlighted those issues which it has found particularly relevant to, or that help explain, its decision-making.

7. The case concerns 5 Woodhouse Green, Thurcroft, Rotherham, South Yorkshire SS66 9AJ ("the property"). The Tribunal has not inspected it but has been helped by external photographs that can be seen on Google's Street View. 5 Woodhouse Green is at the end of a terrace of 8 houses on a corner plot setback from the adjoining roadways and is screened by well-established hedges.

8. The following matters, referred to in regular print, are referred to in the papers or are of public record. The additional matters, set out in italics, were confirmed at the hearing. None have been disputed.

1 May 2020	The Council designated 6 areas within the Borough for selective licensing including parts of Thurcroft.
January 2021	Mr Sopaj purchased the property.
From January to November 2021	He refurbished it in readiness and before letting it.
From December 2021 to the end of March 2022	The property was let.
29 March 2022	Mr Squires working with a joint partnership team with the Police to tackle drug cultivation in residential premises in Rotherham executed a warrant at the property. The police seized various cannabis plants and arrested two men who were later were given prison sentences for the production of controlled class B drugs. The subsequent Housing Health and Safety Rating System ("HHSRS") assessment of the property identified Category 1 hazards, being electrical and a risk of structural collapse. The electrical meter had been bypassed presenting "a significant risk not only of electrocution to anyone in the property, but also the risk of fire to the property and other properties within the terraced row"
29 March 2022	The Council wrote to Mr Sopaj, who lives in Enfield, enclosing an Emergency Prohibition Order ("the EPO") which detailed the identified hazards and the remedial action required before the Council could consider revoking the order. Clause 5 confirmed that the Order "prohibits … the use of the dwelling for human habitation."
Sunday 1 May 2022 at 20.49	Mr Sopaj emailed Mr Squires asking "Can I have access on 3rd May and to remove metal shutters as well because that day I'll fit the door as well. And if you can come to check as well because that day I'll rent the house…"
Monday 2 May	was a bank holiday.
3 May 2022 at 8.53	Mr Squires replied with an email stating "unfortunately, we didn't receive your request on Friday for any access this week, therefore we are unable to grant you access today. However, if you require access the rest of the week let me know by 3 pm.… Please be aware that the metal grills will not be remove*(d)* until the Council is satisfied that the property is ok to rent. This would require a final inspection to ascertain the safety of the property. Also we still require the electrical certificate before any inspection can be arranged".
3 May 2022	Mr Squires first witness statement described Mr Sopaj having telephoned his office to report that he had

	removed the security grills and asking for collection to be arranged. Council officers then visited the property and found that the ground floor grills had were stacked in the garden. Mr Squires stated "Whilst at the property a male now known to be the new tenant, arrived with a small white removals van to move into the property". He had a key given to him that morning by Mr Sopaj when the grills were removed. He (and his wife who was telephoned) were informed that they could not inhabit the property as it was prohibited. She told the officers that she had found the property advertised a few weeks before. After the conversation she telephoned the Council tax department to delay the start date explaining that the property was now not ready. Mr Sopaj who was, by then travelling back to London was telephoned, and arrangements made for the grills to be resecured.
10 May 2022	The Council conducted a full HHSRS assessment of the property and decided (inter alia) that the EPO should be lifted and revoked, *having then been satisfied that the necessary safety certification was in place*.
13 May 2022	The Council wrote to Mr Sopaj stating "I am writing to inform you that I've recently reinspected the above premises to check on the progress of repair works. I can now confirm that all works have now been completed to a satisfactory standard. I must thank you for your cooperation in rectifying the problems that were present. I am now required to formally revoke the Emergency Prohibition order…". The attached formal notice of revocation reaffirmed that the works required under the EPO "have now been completed".
13 May 2022	The Council wrote a further letter to Mr Sopaj referring again to the inspection on 10 May. The letter did not refer to the words "Improvement Notice" in the heading, but in the body of the letter referred to an enclosed notice "pursuant to sections 11 and 12 of the Housing Act 2004". The copy of the notice as exhibited with the papers was unsigned, undated, and had various gaps left blank. The remedial works referred to were some upstairs window restrictors, an interlinked fire detection system, noting that there was just a battery operated smoke detector on the staircase, resecuring a light switch in the utility room, and putting a silicone or mastic seal between the worktop and tiled wall in the kitchen.
13 May 2022	Mr Squires' first witness statement referred to a third letter to Mr Sopaj "inviting him to attend a recorded interview under caution… arranged for Friday 20 May 2022"at the Council's offices in Rotherham. He stated Mr Sopaj subsequently telephoned the office to say that he would not be able to attend the arranged interview. "He was then offered to give his availability for the week

	commencing 6 June 2022 but he did not reply to rearrange".
31 May 2022	*The Council lifted and revoked the Improvement notice being satisfied that the requirements of the notice have been complied with.*
1 June 2022	The new tenant informed the Council tax department that he moved into the property on this date.
7 November 2022	Mr Sopaj bank records showed a Visa payment to the Council for fees relating to his application for a selective licence in respect of the property.
16 November 2022	The Court registers of Sheffield Magistrates Court noted Mr Sopaj being convicted, on the information of the Council and after entering guilty pleas, of 2 offences. The first, that on 1 June 2022 of having control or managing the property which was required to be licensed but was not so licenced contrary to section 96 (1) and (5) of the Housing Act 2004. And the second, that on 3 May 2022 knowing that an EPO had become operative, he "permitted the premises to be used in contravention of the order in that it was not licensed." Mr Sopaj was fined a total of £500 plus a victim services surcharge of £50 and costs of £204.41.
24 November 2022	*The Council granted Mr Sopaj a selective licence for the property.*
12 December 2022	The council served Mr Sopaj with a notice of its intention to apply for a banning order (the "Notice of intention").
19 December 2023	The Application is made by the Council to the Tribunal.
28 December 2023	An annual gas safety inspection was recorded.
8 January 2024	The electrical installations were inspected by a registered inspector and found to be satisfactory, with it stated in his EICR "that there are no items adversely affecting electrical safety".
	A reference and testimonial from Mr Sopaj's present tenants referred to him having "been a very good landlord especially in maintaining and making sure that house is very conducive for us as tenants to live in".

Law and Guidance

The relevant legislation

9. The statutory provisions relating to banning orders are set out in Chapter 2 of Part 2 of the 2016 Act in sections 14 – 27.

10. Section 14 states:
"(1) In this Part "banning order" means an order, made by the First-tier Tribunal, banning a person from—
(a) letting housing in England,

(b) engaging in English letting agency work,
(c) engaging in English property management work, or
(d) doing two or more of those things.
...
(3) In this Part "banning order offence" means an offence of a description specified in regulations made by the Secretary of State.
...."

11. The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 prescribes and lists what are banning order offences. The list includes the offences of a failure to comply with a prohibition order etc under section 32(1) of the Housing Act 2004 and in relation to licensing of houses under section 95(1) and (2) of the same Act.

12. Section 15 of the 2016 Act provides:
"(1) A local housing authority in England may apply for a banning order against a person who has been convicted of a banning order offence." It also details the procedure to be followed by the local housing authority if it seeks to have a banning order made. Within six months of the date of the conviction for the relevant offence the authority must give the person concerned notice of its intention to seek an order, inform them of its reasons for doing so and invite him to make representations within a period of at least 28 days. The authority must then consider any representations it receives during the notice period.

13. Section 16 states: "(1) The First-tier Tribunal may make a banning order against a person who—
(a) has been convicted of a banning order offence, and
(b) was a residential landlord or a property agent at the time the offence was committed.....
(2) A banning order may only be made on an application by a local housing authority in England that has complied with section 15.
....
(4) In deciding whether to make a banning order against a person, and in deciding what order to make, the Tribunal must consider—
(a) the seriousness of the offence of which the person has been convicted,
(b) any previous convictions that the person has for a banning order offence,
(c) whether the person is or has at any time been included in the database of rogue landlords and property agents, and
(d) the likely effect of the banning order on the person and anyone else who may be affected by the order."

14. It is clear from the wording of section 16 that the Tribunal has a discretion as to whether to make a banning order and that it may consider other relevant matters together with those specifically referred to in subsection (4) which it must consider.

15. Section 17 provides that a banning order must specify the length of the ban being imposed, which may not be less than 12 months.

16. Breach of a banning order is a criminal offence (as referred to in section 21). It can also lead to the imposition of a civil financial penalty of up to £30,000 (under section 23). There are also anti-avoidance provisions (in section 27) which invalidate any unauthorised transfer of an estate in land to a prohibited person by a person who is subject to a banning order that includes a ban on letting.

17. Exceptions can be made to a ban (section 17(3) and (4)) for example, to deal with cases where there are existing tenancies, and the landlord does not have the power to bring them to an immediate end. A banning order does not invalidate any tenancy agreement held by occupiers of a property (although there may be circumstances where, following a banning order, the management of the property is taken over by the local housing authority under Part 4 of the Housing Act 2004).

18. In the context of this case, the statutory provisions relating to what are termed as "spent" convictions are also relevant.

19. Section 1(1) of the Rehabilitation of Offenders Act 1974 ("the 1974 Act") states "…[W]here an individual has been convicted….. of any offence or offences, and the following conditions are satisfied…. then, after the end of the rehabilitation period so applicable…, that individual shall for the purposes of this Act be treated as a rehabilitated person in respect of the …conviction and that conviction shall for those purposes be treated as spent."

20. Where the sentence that has been imposed is a fine, sections 5 and 6 confirm the rehabilitation period is 12 months beginning with the date of the conviction.

21. Section 4 of the 1974 Act provides that once a conviction is spent, certain evidence is inadmissible and certain questions cannot be asked of the rehabilitated person in any proceedings and states:
"(1) Subject to sections 7 and 8 below, a person who has become a rehabilitated person for the purposes of this Act in respect of a conviction shall be treated for all purposes in law as a person who has not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction; and, notwithstanding the provisions of any other enactment or rule of law to the contrary, but subject as aforesaid—
(a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in England and Wales to prove that any such person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction; and (b) a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto."

22. Section 4(1) of the 1974 Act is expressly subject to section 7 which specifies in sub-section (3): " If at any stage in any proceedings before a

judicial authority ….. the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit or, as the case may be, require the evidence in question notwithstanding the provisions of subsection (1) of section 4 above, and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.".

The Government's guidance and the Council's own policy

23. In April 2018 the Ministry of Housing, Communities and Local Government issued non-statutory guidance entitled "Banning Order Offences under the Housing and Planning Act 2016. The stated intention being to help local housing authorities understand how to use the powers to ban particular landlords from renting out property. Paragraph 5.2 also states that tribunals may also have regard to it.

24. The guidance specifically notes the Government's intention to crack down on "a small number of rogue or criminal landlords [who] knowingly rent out unsafe and substandard accommodation" and to disrupt their business model. It recommends that banning orders should be aimed at*: "Rogue landlords who flout their legal obligations and rent out accommodation which is substandard. We expect banning orders to be used for the most serious offenders."*

25. The guidance also states that local housing authorities are expected to develop and document their own policy on when to pursue a banning order and should decide which option to pursue on a case-by-case basis in line with that policy. It repeats the expectation that a local housing authority will pursue a banning order for the most serious offenders. In deciding whether to do so, the guidance recommends that the authority should have regard to the factors listed in section 16(4) of the 2016 Act as referred to above**.** It also recommends that the following considerations are relevant to an assessment of the likely effect of a banning order: the harm caused to the tenant by the offence; punishment of the offender; and the deterrent effect upon the offender and others.

26. Paragraph 3.4 of the guidance states: "A spent conviction should not be taken into account when determining whether to apply for or make a banning order."

27. The Council has adopted its own "Banning Order Policy". Clause 3.3 reiterates the guidance by confirming when applying the policy "Spent conviction should not be taken into account.".

28. When referring to its decision-making clause 5.1 it states "as recommended by the government guidance, the council will consider the following factors when deciding whether to apply a banning order when recommending the length of any banning order:

- the seriousness of the offence
- previous convictions/rogue landlord database
- harm caused to the tenant
- punishment of the offender
- deterrence to the offender from repeating the offence
- deterrence to others from committing similar offences.

It then goes on to detail how it should consider each of such matters.

The parties' written submissions

29. In the Application, the Council stated that on 3 May 2022 it became aware that Mr Sopaj had allowed the Property to be occupied by new tenants in breach of the EPO "which is a serious offence. The metal grills on the property, placed to prevent human habitation had been removed…. The Respondent had not taken steps to carry out the necessary repairs… prior to the property being rented out again…..In allowing the property to be rented out whilst in an unsafe condition the Respondent showed no regard for the physical safety of the tenants, as the condition of the property caused a risk of structural collapse, and significant risk of electrocution and/or fire damage to the property, its occupants and neighbouring buildings"….
"The property is within a designated area for Selective Licensing …. which requires all privately rented properties to be licensed with a number of conditions which must be complied with…. the Respondent purchased the property on 14 January 2022*(sic)* and no selective licence application for the property has been received since this date…. the Applicant …is of the view that only a Banning Order will deter the Respondent from repeating the offence and protect tenants from potential harm. Whilst the length of the banning order is ultimately determined by the Tribunal, the Applicant….. would suggest a 5- year banning order is proportionate in this case for the following reasons:
(1) The offences are both serious;
(2) The Respondent has shown disregard for his tenant's safety and well-being;
(3) By failing to licence the Property as required the Respondent avoided the requirements of licence including inspections of the property designed to ensure the property adheres to safety standards;
(4) There is a need to deter the Respondent and other landlords from committing similar offences and placing tenants at risk".

30. Mr Sopaj stated "On 3rd May after I fixed everything and I did new (electrical certificate, gas certificate, and report from structural engineering)…I removed the metal grills. I did this because I thought is safe now… For this mistake I been in court and I paid a fine £754.41 for not having selective license and for removing metal grills….I paid for Selective Licensing late application penalty fee £204…. I paid for Selective Licensing Selective licence application fee £256.70… I paid £600 to council for inspection… My only mistake which one I did was renting house without selective license for 5 months December 2021-April 2022. But was not on purpose".

The Hearing

31. The start was delayed because of internet connectivity issues. In the event, Ms Etheridge and Mr Squires were unable to establish a full video connection but joined the hearing via a telephone link, allowing them to hear and be heard but not be seen.

32. Mr Sopaj confirmed that he had purchased the property in 2021 for £80,000 and thereafter spent £30,000 improving it in readiness for it to be let. It was his first, and to date, his only purchase of an investment property. Between December 2021 and March 2022, it was occupied by tenants found via a contractor who had fixed its door. Mr Sopaj had no knowledge of how they were using the property until March 2022. He readily accepted that the property had not been licensed during the letting, simply because he did not know that a licence was required. He was not advised of the need for a licence when buying the property. He confirmed that he had spent considerable amounts on the property's renovation and that it made no sense for him not to have applied for a licence if he had known that one was required. When he was advised of the need, he apologised for his mistake, acknowledged it, and thereafter applied for the licence, which the Council then granted.

33. The timeline and core events as previously outlined were discussed and amplified.

34. Mr Squires explained the all too predictable dangers within a property adapted by criminals for the illegal production of cannabis, and why the EPO was required.

35. He also confirmed that he had been on hand with a colleague at the property on 3 May when the new tenant was turned away.

36. He explained that different letters had been sent out on 13 May because of the use of standard letters and acknowledged that they gave mixed messages.

37. The Tribunal pointed out that the copy of the "improvement notice" submitted within the Council's bundle was of an incomplete, undated unsigned document. Ms Etheridge was surprised. Mr Squires said that the error was his, due possibly to the way documents were filed, but confirmed that an improvement notice had been properly completed and served on 13 May. He was also able to confirm by consulting the Council's records that it had been lifted and revoked on 31 May after he and the Council had been satisfied that the specified remedial works had all by then been satisfactorily completed.

38. Ms Etheridge acknowledged, as she had to, that there were inconsistencies in the Council granting Mr Sopaj a selective licence, thereby clearly signalling its acceptance of him as a fit and proper person and the issue, but 18 days later, of the notice of intention to apply for a banning order.

39. Both Ms Etheridge and Mr Squires related that they had limited knowledge of exactly how selective licensing applications were processed because of being handled by other officers within the Council.

40. There was discussion as to the admissibility of the evidence of the spent convictions. Ms Etheridge said that the reason that the Application had been delayed was because of "workloads" and apologised. However, she submitted a breach of the EPO was nonetheless particularly serious, stressing that an EPO is itself a clear indication of an inherently dangerous property which must not be occupied for human habitation. When asked as to the evidence of the property having been occupied before the Council chose to revoke the EPO, she submitted that it was enough that Mr Sopaj had arranged a tenancy and handed keys to his new tenants whilst the EPO was still in place.

41. The advice set out in the recent Upper Tribunal case *Hussain v London Borough of Newham UT LC 2023 262* was referred to. Ms Etheridge confirmed that it was authority that the Tribunal could proceed to make a banning order notwithstanding, as in this case, an application was only made following the relied-on convictions having become spent.

42. Much to the Tribunal's expressed surprise, Ms Etheridge confirmed that this case was the first where the Council had applied for a Banning Order.

43. Mr Sopaj explained that the EICR exhibited to the tribunal was simply doubling up on that which had previously been exhibited to the Council and obtained in advance of the hearing to reinforce the point that the electrics within the property have been made safe.

44. Mr Sopaj drew attention to the positive testimonial and reference from his present tenants, confirming that the property was now let at a rent of £750 per calendar month.

45. He emphasised that no harm had been caused to any occupier or tenant, no one was or had been in danger, and that he had done everything that the council had demanded of him. He accepted that he did not know about the selective licensing requirement, but that he had asked Mr Squires to let him know what I have to do next and thereafter always complied with it. It was he who had asked the Council to reinspect.

46. Ms Etheridge in summing up referred to the Tribunal's powers confirming that whilst the Council had requested a 5- year banning order, it was possible for it to make an order for a lesser period, and to incorporate exemptions to protect the existing tenancy. She submitted that the offence of breaching the EPO posed a risk of serious harm, emphasising that Mr Sopaj by removing the grills and choosing to move tenants in before providing the Council with evidence of the requisite safety certificates showed a lack of regard for their and others safety and that the circumstances were such that he should be removed from the private rented sector.

The Tribunal's Reasons

47. The Tribunal had first to determine whether the Council had complied with and satisfied the procedural requirements set out in section 15 of the 2016 Act.

48. The Tribunal found that the notice of intention to apply for a banning order was in an appropriate form and correctly served within the requisite six-month window. The Tribunal also found that Mr Sopaj was a "residential landlord" on 1 June 2022 when his new tenants moved into and starting living in the property.

49. Notwithstanding that both the guidance and the Council's own policy unambiguously confirm that spent convictions should not be taken into account, section 15 does not set a time limit on when an application must be made, beyond the requirement in sub-section (5) of the Council having to wait until the notice period has expired, which it did.

50. Nevertheless, because the Application was not submitted until after the 2 convictions relied upon by the Council were spent, the Tribunal was conscious from the outset that it would need to address the question of whether "justice cannot be done" without the evidence of those convictions being admitted.

51. The Court of Appeal in *Hussain v Waltham Forest LBC [2020] EWCA Civ 1539* has confirmed that notwithstanding where section 4(1)(a) of the 1974 Act makes evidence of spent convictions inadmissible, evidence of the circumstances surrounding those convictions can still be adduced.

52. The Tribunal therefore determined that to be able do its job properly it must first consider the full circumstances of the case, focusing on the facts and what took place and when, before returning to the question of whether evidence of the 2 spent convictions could or should be admitted.

53. The Tribunal found all the participants to be honest, credible and straightforward, and was grateful for their assistance.

54. The following findings and facts are not in dispute: –

- Mr Sopaj played no part in the property being illegally used by others for cannabis production;
- it follows that he and the property were properly to be regarded as victims to those who damaged it and used it for criminal purposes;
- it was entirely proper for the Council to impose the EPO when it did;
- Mr Sopaj does not have any previous convictions for a banning order offence;
- he is not, nor has at any time been included in the database of rogue landlords and property agents;
- Mr Sopaj does not own any investment or letting property other than 5 Woodhouse Green;
- his purchase of the property was some months after the Council had designated the area within which it is situated as subject to selective licensing;

- he has readily accepted that he committed the offence of not having the requisite licence when initially letting the property.

55. The Tribunal made the following further findings which are relevant to its decision making: –

- it is not clear that the property was in fact used in contravention of the EPO. The Tribunal is not persuaded by the Council's submissions that the conditions referred to and set out in EPO were, in the event, breached. Those conditions make no reference to grills, access or otherwise. The Tribunal does not in any way criticise the actions taken by the Council on 3 May when turning the new tenant away, and readily concedes that Mr Sopaj had every intention of then allowing the property to be lived in with a tenancy having already been created. Nevertheless, the evidence presented by the Council falls short of establishing that the property was lived in or used for human habitation whilst the EPO was still in force;
- there are concerns as to how the matter may have been presented to the Magistrates. The court records refer to the Council as being the informant and describe the offence as Mr Sopaj knowing the EPO had become operative, without reasonable excuse permitting it to be used in contravention of the order in that *it was not licensed*. This appears to have been an unjustified conflation of 2 separate offences;
- Mr Sopaj throughout appears to have made diligent and timely efforts to repair damage caused by others to ensure that the property could again be safely relet;
- it was he who notified and asked the Council to reinspect;
- clearly, he should not have put in hand arrangements for it to be occupied before the Council had confirmed its satisfaction with the requisite reports, certificates and works specified in the EPO;
- nevertheless, when the Council did, in the next week, inspect it then confirmed to Mr Sopaj its satisfaction by revoking the EPO with its officer writing "*I can now confirm all works have now been completed to a satisfactory standard. I must thank you for your cooperation in rectifying the problems that were present*.";
- Mr Sopaj also completed the works referenced in the improvement notice, before even the date specified for them to be started. The improvement notice was lifted and revoked but 18 days after it was dated. Section 13(3) of the Housing Act 2004 specifically prohibits an improvement notice requiring remedial action to be started within less than 28 days. Clearly therefore Mr Sopaj cannot have been in breach of the improvement notice;
- the Council's lifting and revocation of the EPO and then the improvement notice both predated the new tenants' occupation of the property;
- the Tribunal is far from being persuaded of the Council's assertions within the Application that he allowed the property to be rented out whilst in an unsafe condition, or that he showed no regard for the physical safety of the tenants;
- the Council's erroneous submission in the Application that "no licence application for the property had been received" was contradicted by the evidence presented by Mr Sopaj and when the Council confirmed during the hearing not only that a licence application had been received but a licence granted by it prior to it making the Application.

56. With such findings in mind, the Tribunal turned next to a consideration of those matters that it must consider (as set out in section 16(4) of the 2016 Act) if it felt it could or should exercise its discretion to make a banning order, together also with the factors mentioned in the guidance and the Council's own policy.

57. The first matter to consider was the seriousness of the 2 offences which have been referred to, both individually and when taken together.

58. In so doing, the Tribunal noted that both offences, if found to have been committed, are potentially punishable by fines, but not as with some other banning order offences, a custodial sentence. Parliament has therefore clearly signalled that these 2 offences are individually not as serious as some others on its list of banning order offences.

59. Looking at each in turn: –

60. As has been explained, the Tribunal is not satisfied that the alleged offence of a breach of the EPO, when properly framed, was committed. Nor is the Tribunal persuaded by the Council's submissions that a breach of an EPO must always be a very serious matter. The Tribunal believes that, even if an offence had taken place, any proper assessment of its seriousness must include a consideration of how dangerous the property was at the time in question. Mr Sopaj is adamant that when attempting to relet the property that "there was no danger to tenants". And it is difficult not to conclude that the Council endorsed that finding when, in the week afterwards and having by then undertaken a full HHSRS reassessment, it revoked the EPO, thanking Mr Sopaj for his cooperation and confirming "all works have now been completed to a satisfactory standard".

61. To his credit, Mr Sopaj has never sought to dispute the offence of failing to have a selective licence when first letting the property. As was noted at the hearing, Section 95(4) of the 2004 Act confirms a reasonable excuse is a defence. The Tribunal accepts Mr Sopaj's submission that when committing the offence he did so inadvertently. Whilst that does not provide a complete defence it should properly be regarded as a matter in mitigation. The Tribunal is also minded of the observation made by the Upper Tribunal in *Rakusen v Jepsen (2020) UKUT 298 (LC)* where it said that despite its irregular status, an unlicensed property may be a perfectly satisfactory place to live. That the property is now so is endorsed by the testimonial from the present tenants. It is also relevant that Mr Sopaj has since committing the offence applied for and been granted a licence by the Council.

62. The Tribunal has concluded that whilst all offences can in some senses be considered to be serious, that committed by Mr Sopaj falls a very long way short of being sufficiently serious to justify a banning order.

63. Nor when looking at any of the other matters for consideration under section 16, the guidance, or the council's own policy has it found any reason to change that finding. Mr Sopaj has no previous convictions for a banning order

offence; he neither is nor has been included in the database of rogue landlords; there is no evidence of harm caused to a tenant, or of a series of breaches; he has been punished; and he has taken steps to not repeat the offence.

64. Rather than finding Mr Sopaj to be in the words of the guidance a rogue landlord or one of the most serious offenders, the evidence points to him being anxious to complete all the works specified by the Council in a timely manner so as to make the property safe again after it had been criminally vandalised by others.

65. The Tribunal is loath to criticise an overburdened housing authority but cannot but question some of the Council's decision-making, the apparent disconnect between the work of different departments, and its deviation from the advice given not just in the government guidance but also its own policy.

66. The Tribunal finds that to further punish Mr Sopaj, and particularly any making of a banning order, with the all too predictable adverse effects for both him and his tenants, would be both unjustified and wholly disproportionate.

67. Having concluded its analysis, the Tribunal returned to the question of whether "justice cannot be done" except by admitting the 2 spent convictions. The short answer is no.

68. Ms Etheridge quite rightly alluded to the recent and helpful advice in *Hussain v London Borough of Newham* in support of her submission that spent convictions are not necessarily fatal to an application. Nevertheless, as Judge Cooke said in that case *"the FTT will no doubt not invariably decide to admit evidence of spent convictions; it will have regard to the circumstances the case before it, for example to whether only spent convictions are in issue or a mixture of spent and live convictions, to the time when the offences were committed, and the time when the convictions became spent"*. She also said *"where the FTT does admit evidence of spent convictions it will then give very careful consideration… to whether a banning order should in fact be made on the basis of such convictions. The statute does not prevent a banning order being made on that basis, but it is unlikely that that will happen except in a very serious case…"*.

69. In this case, the Tribunal has found that there is no question of justice not being able to be done without admitting the 2 spent convictions, simply because its decision would be the same whether they are admitted or not.

70. For all the stated reasons, the Tribunal has found the Application to have been misplaced and that it must be rejected.